No. 85 86-17

Supreme Court, U.S.
FILED
JUL 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1985

City of Corona
A Municipal Corporation;
City Attorney of Corona, California; James J. Clancy

Petitioners,

vs.

Superior Court of the State of California for the County of Riverside; The "Book Store", being a bookstore and motion picture arcade, located at 601 West Sixth Street, Corona, California; Helen E. Ebel; Thomas Charles Ebel; Does 1 through 10, inclusive,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

James J. Clancy
9055 La Tuna Canyon Road
Sun Valley, Calif. 91352
(818) 352-2069

Attorney for Petitioners
Counsel of Record.

QUESTION PRESENTED

I

Whether the April 3, 1986 Order of the California Supreme Court, which denied Petitioner's request for the preparation of an audio and typewritten copy of the audio tape of the oral argument in the California Supreme Court on February 27, 1985, in the appeal of this cause, for the purpose of assisting in the presentation of the federal questions in the Petition for Writ of Certiorari in the United States Supreme Court in No. 85-1402, constitutes a denial of substantive and procedural due process of law under the Fourteenth Amendment to the Federal Constitution?

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The Petitioner, James J. Clancy, a private attorney at law, respectfully prays that a Writ of Certiorari be issued to the Supreme Court of the State of California, to review its Order filed on April 3, 1986.

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JURISDICTION

The Order of the Supreme Court of the State of California was filed on April 3, 1986. A copy of that Order appears at Appendix A. This Petition for Certiorari was filed within ninety (90) days from the date the Order was filed. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3) and Rule 17.1(c) of the U.S. Supreme Court.

STATEMENT OF THE CASE

On February 18, 1986, Petitioner filed a Petition for a Writ of Certiorari to the Supreme Court of the State of California entitled "City of Corona, a municipal corporation; City Attorney of Corona, California; James J. Clancy, Petitioners, v. Superior Court of the State of California for the County of Riverside, et al.". At pages 8 to 10, the Statement of the Case was alleged to be as follows:

"Because of the procedural development of the case, the federal questions herein did not surface until the time of oral argument before the California Supreme Court. At that time, the arguments of certain members of the Court, including the author of the Court's opinion, expressed a bias against the City of Corona's philosophical position in such litigation.[17] Thereafter, the Court's opinion did not discuss the federal questions which had been raised at oral argument. At that juncture Petitioner Clancy petitioned the Court for a rehearing and decision on the federal issues which had been framed during the oral argument and sought a transcript of the oral argument to focus upon the merits of the constitutional issues which had been discussed. On three separate applications, the Court refused to permit Petitioner to obtain such a transcript. Concomitantly with the filing of this Petition, Petitioners will request the California Supreme Court for a copy of the oral argument to be filed as Appendix I to this Petition in a supplemental pleading. . . ."

At pages 54-56 of the argument, Petitioners stated as follows:

"Notwithstanding the fact that the above-described due process and equal protection of the laws issues which are inherent in the Court's broad holding that an attorney who represents the public may not be employed on a contingency fee basis, were raised and discussed during Plaintiffs' oral argument, the opinion of Justice Mosk, filed on Sep-

tember 16, 1985, was silent on those issues, and it became necessary to petition for a rehearing in order that such issues might be made a matter of record. See Petition for Rehearing at Appendix B. Nor did the Court address such issues in the Court's modification of its opinion. See Appendix C. Thereafter, three separate applications were made to the California Supreme Court for permission to have the oral argument transcribed at Plaintiff's expense, to assist in the preparation of a Petition for Rehearing and for the record on a Petition for Writ of Certiorari to this Court. On each of those occasions, the application was denied, except that on the third application, permission was granted the attorney of record permission to listen to the tape once, and take notes. When Petitioner Clancy visited the California Supreme Court to listen to the tape, he was advised that he could not have the secretary who accompanied him take down a shorthand transcription of the oral arguments while he listened. . . ."

On April 3, 1986, the California Supreme Court filed an Order reading:

"Application for an Order directing the preparation of audio and typewritten copies of the audio tape of the oral argument in the above-entitled cause is DENIED.

BIRD
Chief Justice"

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A copy of that Order appears at Appendix 1.

REASONS FOR GRANTING THE WRIT

I

THE COURTS OF THIS COUNTRY RECOGNIZE A GENERAL RIGHT TO INSPECT AND COPY PUBLIC RECORDS AND DOCUMENTS, INCLUDING JUDICIAL RECORDS AND DOCUMENTS.

In Richard Nixon v. Warner Communications, Inc., et al., 435 U.S. 589 at page 597, this Court stated:

> "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."

and at page 598:

> "It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes. For example, the common law right of inspection has bowed before the power of a court to insure that its records are not 'used to gratify private spite or promote public scandal' through the publication of 'the painful and sometimes disgusting details of a divorce case.'"

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and at page 599:

> "It is difficult to distill from the relatively few judicial decisions a comprehensive definition of what is referred to as the common-law right of access or to identify all the factors to be weighed in determining whether access is appropriate. The few cases that have recognized such a right do agree that the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case. . . ."

Petitioner submits that the Statement of Facts herein establish an example of "the Common-Law right of access". Petitioner entertains an honest belief that the California Supreme Court's denial of "the Common-Law right of access" has detrimentally affected Petitioner's ability to frame the federal questions and present written arguments thereon in Case Number 85-1402.

CONCLUSION

This Court should grant this Petition and require that the audio and typewritten copies of the audio tape of oral argument in the California Supreme Court on February 27, 1985 be prepared and forwarded to Petitioner for the use requested.

DATED. July 2, 1986.

Respectfully submitted,

JAMES J. CLANCY
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, JAMES J. CLANCY, hereby certify that on this 2nd day of July, 1986, the original and 40 copies of the within Petition for Writ of Certiorari were deposited in the United States Post Office in Van Nuys, California, with first class postage prepaid, and properly addressed to the Clerk of the United States Supreme Court.

I further certify that (3) copies were also mailed, postage prepaid, to the below-listed parties to the proceedings and that all parties required to be served have been served.

J. DAVID HENNIGAN
Judge, Superior Court
4050 Main Street
Riverside, CA 92501

ROGER JON DIAMOND
15415 Sunset Blvd.
Pacific Palisades, CA
90272

JAMES J. CLANCY
9055 La Tuna Canyon Rd.
Sun Valley, CA 91352

Attorney for Petitioner

APPENDIX A

ORDER OF THE CALIFORNIA SUPREME COURT FILED APRIL 3, 1986 IN PEOPLE EX REL. CLANCY, ETC., ET AL., PETITIONERS, v. SUPERIOR COURT OF THE COUNTY OF RIVERSIDE, RESPONDENT, EBEL ET AL., REAL PARTIES IN INTEREST.

(Reference: Petition at page 2.)

SUPREME COURT FILED
APR. 3, 1986
Laurence P. Gill, Clerk
Deputy

No. L.A. 32041

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE EX REL. CLANCY, ETC., ET AL., Petitioners,

v.

SUPERIOR COURT OF THE COUNTY OF RIVERSIDE, Respondent; EBEL ET AL., Real Parties in Interest

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Application for an order directing the preparation of audio and typewritten copies of the audio tape of the oral argument in the above-entitled cause is DENIED.

BIRD
Chief Justice

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